(2)

No. 06-613

Supreme Court, U.S.
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In The Supreme Court of the United States

CHARLES MEYERS,

Petitioner,

v.

CITY OF LITTLETON AND THE PEOPLE OF THE STATE OF COLORADO AND THE MUNICIPAL COURT IN AND FOR THE CITY OF LITTLETON,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Colorado, Arapahoe County

BRIEF IN OPPOSITION

LARRY W. BERKOWITZ
City Attorney
BRAD D. BAILEY
Assistant City Attorney
ALAN C. KATZ
Deputy City Attorney
Counsel of Record
City of Littleton, Colorado
2255 West Berry Avenue
Littleton, Colorado 80165
(303) 795-3725

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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STATEMENT OF THE CASE

On November 24, 2004 Petitioner Charles Meyers, was issued a Summons and Complaint by an Officer of the Littleton Police Department for Shoplifting. Mr. Meyers perfected his right to jury trial by filing a proper demand and paying the $25 fee required by Colorado Municipal Court Rule 223(a). Mr. Meyers was convicted by a jury of six persons on March 11, 2005 and sentenced to pay costs and fees and serve 10 days in jail. Mr. Meyers appealed his conviction to the Arapahoe County District Court which upheld his conviction, he then sought, but was denied, the issuance of a Writ of Certiorari in the Colorado Supreme Court and now seeks certiorari review by this Court. (App. D1)

Mr. Meyers was arraigned on December 15, 2004. At that time he was given a detailed and constitutional advisement of his rights, including the opportunity to have counsel appointed to represent him. The advisement followed the requirements of Colorado Municipal Court Rule 210(a). Thereafter, Mr. Meyers filed a proper discovery motion and sought to obtain a *subpoena duces tecum* to obtain records of the victim grocery store. The People provided discovery to Mr. Meyers. After the People secured a copy of the store video tape of the incident of Mr. Meyers on the date of the offense and all of the internal reports created by the agents of the victim grocery store, those items were also provided to Mr. Meyers by the People. The video record of the crime was a recording made by agents of the victim grocery store.

At no time did Mr. Meyers request the municipal court appoint counsel to aid him. At no time did Mr. Meyers express any confusion or concern regarding the advisement

that potential penalties for the crime of shoplifting are up to a year in the county jail, a one thousand dollar fine, or both fine and incarceration.

On March 8, 2005, the trial court held a trial readiness hearing. Mr. Meyers was ready for trial. When the case was called for trial on March 11, 2005, an *in limine* hearing was held concerning Mr. Meyers' companion Linda Sanders being allowed to testify about Mr. Meyers' plan to stage a shoplifting of vitamins. The trial court determined that Ms. Sanders would not be permitted to testify as Mr. Meyers' statements to her were hearsay. Jury selection began after the hearing.

Mr. Meyers testified at trial that he did not shoplift the items, but acted so it would appear he had committed the crime in order to experience the municipal court due process procedures. Mr. Meyers informed the jury that he had for some time been doing some research into municipal law and became interested in the possibility of the municipal law being less than constitutional. He wanted to find out how the motions, hearings, and pleadings intermeshed and how effective the municipal courts were in maintaining constitutional rights and due process. He explained to the jury, the only way to do that was to stage a situation that would appear as if he was shoplifting vitamins, without taking the vitamins from the store.

Mr. Meyers testimony was contradicted by the testimony of the store security agent. Larry Gardner described how Mr. Meyers put the vitamins in his pockets and left the store without paying for them. Mr. Gardner testified the Petitioner also selected a doughnut from the bakery area and ate it while walking through the store and did not pay for the doughnut.

During the course of proceedings in the trial court, the Petitioner filed various motions. Mr. Meyers filed two separate motions to dismiss, a motion to suppress or in the alternative *in limine*, motions for subpoenas to issue, and a motion for vacation or correction of sentence. Mr. Meyers also submitted jury instructions and a theory of the case instruction at trial. The jury found the Petitioner guilty of shoplifting.

Mr. Meyers moved for and was granted a stay of execution pending appeal and perfected his appeal of right to the District Court of Arapahoe County Colorado. Mr. Meyers timely filed a motion for extension of time to file his opening brief, which was granted, and timely filed his briefs with the district court. After entry of the district court order affirming the trial court, Mr. Meyers filed a motion for the district court to reconsider the order affirming the trial court. Mr. Meyers' reconsideration request was denied, he then petitioned the Colorado Supreme Court for a writ of certiorari, which was denied, and now petitions this Honorable Court.

REASONS THE PETITION SHOULD BE DENIED

This case involves the routine application of established Supreme Court precedent by a Colorado state trial court sitting as an appellate court and the Littleton Municipal Court. Because this Court has adequately addressed the right to counsel in criminal cases and the knowing and intelligent waiver of such right, the lower

courts have simply applied the law to the facts in this case.

In *Argersinger v. Hamlin*, 407 U.S. 25 (1972), the Court set out a very clear standard " . . . that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." *Id.* at 37. The Colorado Courts have adopted and consistently followed the holding in *Argersinger*. *See Mulkey v. Sullivan*, 753 P.2d 1226 (Colo. 1988); *People v. Wade*, 757 P.2d 1074 (Colo. 1988).

As this Court has pointed out, the right to be represented by an attorney in a criminal proceeding is balanced by the constitutional right of the defendant to defend himself without counsel when he voluntarily and intelligently elects to do so. *Faretta v. California*, 422 U.S. 806 (1975). It is the obligation of the trial court to determine if the accused is aware of the dangers and disadvantages of self-representation, at least to the point where the record shows that "he knows what he is doing and his choice is made with eyes open." *Id.* at 835, quoting *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 279 (1942). A knowing and intelligent waiver is fact specific to each case.

Although there is no record of any colloquy between the trial court and the Petitioner regarding a knowing and intelligent wavier of the right to counsel, the record is very clear that Mr. Meyers knew what he was doing but was only shocked at the sentence imposed by the trial court.

The Petitioner has characterized his actions as one of civil disobedience or research into the procedures of the municipal court. The Petitioner has pointed to no place in

the record where he made any written or oral requests of the trial court for the appointment of counsel.

The procedural history of this case is replete with Mr. Meyers filing numerous motions without the aid of counsel. These motions begin with the demand for a jury trial in municipal court and end with the petition for writ of certiorari filed with this Court. Nothing in the petition suggests that he did not understand the nature of the proceedings, the nature of the charge against him or the possible penalties. As the trial judge pointed out in his order denying the Petitioner's motion for correction or vacation of sentence, "the Defendant's personal opinion regarding first time offenders, what is or is not 'excessive amount,' and what may be precluded in the absence of violence or the threat of violence, are just that – his personal opinions – and do not determine the sentence of the Court." (App. A3)

Petitioner suggests that his rights of equal protection under the Fourteenth Amendment of the Constitution have been violated because of the differences between the potential sentences for theft offenses under the Littleton Municipal Code versus a similar offense under the Colorado Revised Statutes and also the statutes setting forth municipal offenses in the states of Washington and Pennsylvania. The Petitioner's argument ignores the historical basis for the Fourteenth Amendment, which was to eliminate racial discrimination from officials of state and local government. *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964). As the district court pointed out in its order, the Defendant has not indicated that he was sentenced to ten days in jail because he was a member of a protected class. (App. B3)

Although the equal protection violation was raised as part of his initial appeal to the district court, the claim metamorphosed into an argument that was not raised in his initial appeal. Initially, the Defendant claimed that his sentence of ten days in jail was cruel and unusual punishment and a violation of the Eighth Amendment of the Constitution. Here Petitioner claims that the equal protection violation is a disparity in the potential sentences that would be allowed in Colorado versus states of Pennsylvania and Washington.

The Petitioner's requested relief would turn the concept of federalism on its head. *See Ker v. California*, 374 U.S. 23 (1963) What the Defendant is demanding is that this Court sit as a super legislative body and make a judgment that the potential penalties for shoplifting in every municipality or state or other entity which has the ability to prosecute the crime be the same.

The Petitioner argues that he was unable to use exculpatory evidence at trial because there was destruction of such evidence by the prosecution. The Petitioner's argument fails on at least two points. First, the Petitioner never objected to the introduction of the edited video tape at trial. His failure to object to the introduction of the evidence at that point waived his ability to appeal. *See Anderson v. United States*, 417 U.S. 211 (1974). Second, the Petitioner has never been able to demonstrate that exculpatory evidence was ever in the possession of the prosecutor or some agent of the prosecutor. *See U.S. v. Agurs*, 427 U.S. 97 (1976); *Moore v. Illinois*, 408 U.S. 786 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963).

Finally, the Petitioner's issue regarding the jury instructions does not rise to the level of a constitutional

violation. Mr. Meyers has been unable to demonstrate what constitutional right was violated by the introduction of the instruction.

CONCLUSION

The Petitioner engaged in an experiment to broaden his knowledge of municipal court procedure. His experiment produced results that were unanticipated: Conviction of the petty crime of shoplifting and a sentence of incarceration of ten days. Nothing in this petition suggests the need for certiorari review by this Honorable Court.

December 4, 2006

Respectfully submitted,

LARRY W. BERKOWITZ
BARD D. BAILEY
ALAN C. KATZ
Counsel of Record
City of Littleton, Colorado
2255 West Berry Avenue
Littleton, Colorado 80165
(303) 795-3725